



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201109029**
Release Date: 3/4/11
Date: December 7, 2010
UIL Code: 501.03-30
501.32-00
501.33-00

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: October 18, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = Individual
C = Individual
D = Individual
E = Individual
F = Individual
G = Individual
M = Applicant
Q = State within Island Nation
S = Sovereign Island Nation
U = Foreign Country
V = Foreign City, State
Y = For-Profit Company
t = Date
w = website

UIL #'s:

501.03-30
501.32-00
501.33-00

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code ("Code") section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code subsection 501(c)(3) or under any other subsection of 501(a). The basis for our conclusion is set forth below.

ISSUES

1. Do you meet the organizational test as described in Treas. Reg. 1.501(c)(3)-1(b)? No for the reasons described below.
2. Do you meet the operational test as described in Treas. Reg. 1.501(c)(3)-1(c)? No for the reasons described below

3. Do your operations result in inurement as prohibited by section 501(c)(3) of the Code and Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii)? Yes for the reasons described below.

FACTS

Organization

You were incorporated by B, C, and D under the laws of Q on Date t.

Article V of your Articles of Incorporation provides for B, C, and D as the three initial members of your Board of Directors. All three are compensated for their services.

Article VI of your Articles of Incorporation provides in pertinent part that (a) the affairs of the corporation shall be conducted by the Board of Directors, and (b) decisions of the Board of Directors shall be by majority vote of the membership.

Article VII of your Articles of Incorporation lists the President, Vice-President, and Secretary/Treasurer as B, C, and D, respectively.

Article III, Section 1(a) of your Bylaws provides that "[t]he number of the directors of the Corporation shall be three (3), unless and until otherwise determined by vote of a majority of the entire Board of Directors."

Article III, Section 2 of your Bylaws under "Duties and Powers" states:

"The Board of Directors shall be responsible of the control and management of the affairs, property and interests of the Corporation, and may exercise all powers of the Corporation, except as are in the Articles of Incorporation or by statute expressly conferred upon or reserved by the members."

Your purposes, as stated in Article II of your Articles of Incorporation are as follows:

The purpose of this Charitable Corporation is to help to develop an abundant resource on the island of Q; clean, natural rain water. This program will create an environmentally friendly and sustainable rainwater collection and bottling system coupled with a power generation plant which will create employment and business training, whilst developing a natural resource. Such a project will reduce poverty and dependence on US economic aid and promote community development, education and achievement through cooperative effort. The distribution of net profits will be directed at enhancement of local health, education, indigenous arts and library programs for both young and old, encouraging democratic participation.

Your mission statement, as referenced on your website, states that you are committed to the sustainable & profitable production of bottling pristine rain water utilizing the best environmentally friendly and quality controlled practices. You go on to state that you undertake that all stakeholders, including local communities, staff and investors, are excellently rewarded for their part in creating an industry that furthers the economy and self sufficiency of Q in the S.

Operation

The activities of your organization are stated in relevant part below.

Form 1023, Part IV – Narrative description of activities:

The primary activity is collecting rainwater, running the water through a filtration process and initially selling the water in bulk via a food grade plastic lined twenty foot containers. Past activity includes site inspection, obtaining foreign business license after submitting incorporation documents. It is envisioned that after sufficient capital is accumulated, that the company will purchase or lease a bottling line facility to bottle the [water] on island for sale off island...

For construction, E will be responsible for the construction of the facility. E has hands on (sic) knowledge of rain farm operations, having been involved in the construction of two other rain farm operations in U.

The activity will create employment for the islanders and provide other contractual income for the transport, maintenance of the facility. It is identified that for this facility to be up and running, will help create may additional service jobs related to the facility...

A secondary activity is envisioned to generate hydro power through the collection system. The surplus power generated that is not used by the rainwater project, will be sold to the Q Island power company.

You indicate that you will be run along similar lines to that of a commercial entity; however, as there are no direct shareholders, profits or surplus will be made available for distribution to community groups in accordance with your charter.

You indicate that B and his family own Y, the company that has negotiated the lease and that neither C nor D have any interest in Y. You state that Y will benefit from the surplus water after it has passed through the turbines. The surplus rainwater will be sold in bulk to whatever buyers can be found. Y is a for-profit corporation and hopes to employ a number of locals to handle the containers, maintain the pipes, etc. D is an attorney for Y, but has no ownership interest.

You have a comprehensive website w, listed as your primary website address on your exemption application.

Your website includes an introduction that states you have been established to help to develop an abundant resource on the island of Q; clean, natural rain water that will create an environmentally friendly and sustainable rainwater collection and bottling system coupled with a hydro power generation plant. In the initial stages, you will supply power for the rain farm operation, and once fully operational, will be able to feed surplus power back into the national grid. You indicate that discussions are advancing with G, whose U.S. company develops and builds hydro power stations as well as solar panels.

You indicate that Q has been chosen because of its geographical location, some 2,500 miles away from the nearest industrialized country, and high rainfall averaging some 200 inches annually (with up to 400 inches on the mountain range) for the past 30 years...

You state that the management of the farm will be under a long-term management contract with E who worked side by side with the now deceased inventor and patent holder F. F is noted to have successfully established the first commercial rain farm in V.

You point out that markets for bottled rainwater have already been established through the two U rain farms that supply product into the U domestic market and go on to state that inquiries through marketing consultants in a U.S. state and potential customers from throughout the world have encouraged you to pursue these untapped markets to satisfy the consumers ever increasing demand for pure natural drinking water.

Your facility will be located in Q in the S.

The facility includes rainwater collectors 300 meters (about 1,000 feet) in length, a power plant containing the turbine, a water filtration unit, a disinfection plant, bulk storage water tanks, pumps that transfer water between the containers, water lines from the containers to the power plant, and lines to discharge water after the electricity has been generated.

In your narrative description of activities, you state: "The President, B, will spend full time, on island, to manage, supervise and oversee the development, construction, operation of the facility. Other directors will spend such time as is deemed necessary to facilitate the success of the venture...Another director, D, will spend sufficient time on island to see the smooth operation of this facility."

Y is in the process of entering into a twenty (20) year lease agreement for the real property that will be the site on Q where the rainwater collection plant will be located.

You indicate that B will be on site to arrange for the building of the facility and after the initial facility is up and running, you will then be looking at duplicating this facility on other sites around the Island, stating that "... [t]he rate of expansion will totally depend on sales of water, future demand for electricity."

Funding

In indicating your sources of funding, you state that you intend to raise sufficient funds from US foundations to give start up money for the design and implementation of the engineering plans and that once the company is running and sales of bulk and ultimately bottled, water are ongoing, the company should be self-funded. Funding for the planning, construction and initial operation will be obtained from an electrification agency, or its successor.

Your website states that the project investment over the first two years is US \$ and you are seeking grants from governments and private corporations who may be willing to assist you to build the collection system, storage tanks, factory, bottling plant and associated infrastructure required.

LAW

Section 501(a) of the Code exempts from federal income taxation organizations described in section 501(c).

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of corporations, and any community chest, fund, or foundation, organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Furthermore, section 501(c)(3) sets forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3).

Treas. Reg. § 1.501(c)(3)-1(a) states:

(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term exempt purpose or purposes, as used in this section, means any purpose or purposes specified in section 501(c)(3).

Treas. Reg. § 1.501(c)(3)-1(b)(1)(i) provides that an organization will be regarded as "organized exclusively" for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. § 1.501(c)(3)-1(b)(1)(iii) states:

An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles to engage in a manufacturing business, or to engage in the operation of a social club does not meet the organizational test regardless of the fact that its articles may state that such organization is created for charitable purposes within the meaning of section 501(c)(3) of the Code.

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it is engaged primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(c)(2) indicates that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Treas. Reg. § 1.501(a)-1(c) defines the term "private shareholder

or individual" to mean persons having a personal and private interest in the activities of the organization.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) indicates that an organization is not organized or operated exclusively for one or more exempt purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. Accordingly, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 76-206, 1976-1 C.B. 154, considered an organization formed to promote broadcasting of classical music in a particular community. The organization carried on a variety of activities designed to stimulate public interest in the classical music programs of a for-profit radio station, and thereby enable the station to continue broadcasting such music. The activities included soliciting sponsors, soliciting subscriptions to the station's program guide, and distributing pamphlets and bumper stickers encouraging people to listen to the station. The organization's board of directors represented the community at large and did not include any representatives of the for-profit radio station. The revenue ruling concludes that the organization's activities enable the radio station to increase its total revenues and therefore benefit the for-profit radio station in more than an incidental way. Therefore, the organization is serving a private rather than a public interest and does not qualify for exemption under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In SICO Foundation v. United States, 295 F.2d 924 (Ct. Cl. 1961), the Court of Claims considered a nonstock corporation that owned controlling interests in several businesses engaged in selling and distributing petroleum products and whose net income was distributed to state teachers colleges for scholarships. The court held that the source rather than the destination of income determines whether the organization earning the income is entitled to tax exemption, and where the primary purpose of the organization is the carrying on of a business, the organization is not exempt from tax even though all of its income is devoted to charitable and educational purposes. The court concluded that although the organization gave its profits to charitable organizations, it did not qualify for exemption under section 501(c)(3) because it was primarily operated to carry on the business of selling petroleum products.

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), the Tax Court considered the relationship of P.L.L. Scholarship Fund ("Fund") to a commercial establishment, the Pastime Lounge, Ltd. ("P.L.L."). In addition to serving food and drink, P.L.L. operated bingo on its premises for the avowed purpose of raising money for the Fund's scholarships. The Fund's self-perpetuating board of directors included P.L.L.'s owners and accountant, and two other persons. The court reasoned that, because P.L.L.'s owners controlled the Fund and appointed the Fund's directors, the activities of the Fund could be used to the advantage of P.L.L.'s owners. The Fund claimed that it was independent because there was separate accounting and no payments were going to P.L.L. The court was not persuaded; it stated: "A realistic look at

the operations of these two entities, however, shows that the activities of the taxpayer and the Pastime Lounge were so interrelated as to be functionally inseparable. Separate accountings of receipts and disbursements do not change that fact." The court went on to conclude that, because the record did not show that the Fund was operated exclusively for exempt purposes, but rather indicated that it benefited the private interests of P.L.L.'s owners, exemption was properly denied.

In est of Hawaii v. Commissioner, 71 T.C 1067 (1979), the Tax Court concluded that where several for-profit est (Erhardt Seminars Training) organizations exerted significant indirect control over est of Hawaii, a nonprofit entity, through contractual arrangements, the for-profits were able to use the nonprofit as an "instrument" to further their for-profit purposes. In such a case, the commercial entity was trading on the organization's tax-exempt status. Neither the fact that the for-profits lacked structural control over the organization nor the fact that amounts paid to the for-profit organizations under the contracts were reasonable affected the court's conclusion that est of Hawaii did not qualify as an organization described in section 501(c)(3) of the Code. The court stated that a critical determination is not whether transactions with a for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the exempt organization. The court found that the fact that the nonprofit's rights were dependent upon its tax-exempt status showed the likelihood that the for-profit corporations were capitalizing and trading on that status. The court held that the nonprofit organization was a part of a franchise system that was operated for the benefit of the for-profit corporation and that its affiliation with this system taints it with a substantial commercial purpose, which precluded its exemption under section 501(c)(3) of the Code.

In International Postgraduate Medical Foundation v. Commissioner, T.C. Memo 1989-36, the Tax Court found that the petitioner was not described in section 501(c)(3) based on the fact that it served a substantial nonexempt purpose and that it served a private rather than a public interest.

The petitioner, International Postgraduate Medical Foundation ("Foundation"), was founded by an individual, who also served as the Chief Executive Officer of the Foundation with control of its daily operations, for the stated purpose of providing continuing medical education to physicians by organizing and sponsoring seminars and symposia in the medical field. The petitioner had three trustees: the founder, who was a shareholder and the president of a for-profit travel agency; an attorney; and a third director who was ill and did not participate. The founder served as trustee without salary or compensation in recognition of the organization's use of his for-profit travel agency, to arrange the tours for the seminars. Foundation made all its travel arrangements exclusively through the travel agency. Although the agreement between Foundation and the travel agency allowed for a competitive bidding process, there was no evidence that such bids were ever solicited. The travel agency also billed the travel expenses directly to the individuals participating in the tours and paid "seminar fees" in the sum of 7.5 percent of its gross revenue to Foundation. Foundation located its office within the offices of the travel agency and shared secretarial, clerical and administrative personnel for a fee.

Based on the facts in the administrative record, the court concluded that Foundation was operated for substantial nonexempt purposes. Its rationale rests partially on the principle that

when a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3). The court determined that a substantial purpose of Foundation's operations, as inferred by the facts in the record, was to increase the income of the travel agency. Since Foundation operated for the nonexempt purpose of benefiting the travel agency, and this purpose was substantial, it was not described in section 501(c)(3).

The court concluded that " ... [w]hen a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) even if it furthers other exempt purposes." In addition, to establish that it meets the organizational test for section 501(c)(3), an organization must prove that it operates for a public purpose rather than for the benefit of private interests. Accordingly, the court affirmed the final adverse determination on the additional basis that the Foundation served a private rather than a public interest.

APPLICATION OF THE LAW

Section 501(c)(3) of the Code sets forth criteria for qualification for exempt status for charitable, educational and similar type organizations. In order to be exempt under this paragraph, an organization must meet the organizational test under Treas. Reg. § 1.501(c)(3)-1(b) and the operational test under Treas. Reg. § 1.501(c)(3)-1(c).

You do not meet the organizational test because your articles do not limit your purposes to one or more exempt purposes as stated in Treas. Reg. § 1.501(c)(3)-1(d)(1)(i). In addition, Treas. Reg. § 1.501(c)(3)-1(b)(4) states an organization must dedicate its assets to an exempt purpose. Article IX of your Articles of Incorporation states: "The corporation may be dissolved and its assets liquidated by decision of the Board of Directors on such terms as the Board may provide, and in accordance with the purposes and By-laws of the corporation." Such terms do not indicate your assets are dedicated to an exempt purpose. Although your bylaws reference section 501(c)(3) of the Code, per Treas. Reg. § 1.501(c)(3)-1(b)(2), the term "articles of incorporation" includes the trust instrument, the corporate charter ... or any written instrument by which an organization is created. Your bylaws are not included in that definition.

You do not meet the operational test because your operations do not primarily accomplish one or more exempt purposes specified under section 501(c)(3) of the Code. Your primary activity consists of collecting rainwater, filtering it and then selling it " ... in bulk to whatever buyers can be found." You state in subsequent correspondence that your organization " ... will be run along similar lines to that of a commercial entity ..." You also state that a secondary activity is " ... generat(ing) hydro power through the collection system. The surplus power generated that is not used by the rainwater project will be sold to the Q Island power company." These activities indicate you are operated for a nonexempt commercial purpose rather than for an exempt purpose. As stated in Better Business Bureau, above, the presence of a single nonexempt purpose, if substantial in nature, will destroy exemption

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) states that to be exempt, an organization must serve a public rather than a private interest. As stated above, your founder, B, owns Y, a for-profit company. Y has entered into a lease with a private individual to secure land in order to build a facility upon which your organization will operate. Subsequent correspondence indicates terms have been reached between the two parties and that they are in the process of signing the lease. The correspondence also states that Y will then reassign the lease to you on the same lease terms. You state that the only basis for fair market value is what the Government of Q will lease its land to individuals, agencies, for-profit and non-profit corporations. You then state the Government controls the best lands and any remaining land would lease for a lesser amount. It appears the agreed amount between the two parties is \$ per month and was the result of "years of negotiations." Correspondence signed under penalties of perjury by D, one of your directors states: "In my considered opinion, the terms agreed to meets the given definition of 'fair market value.'" Neither a signed lease between the two parties nor the subsequent lease between Y and you were submitted.

Without having an appraisal of the property conducted by an independent, qualified appraiser, you have not established that your organization is serving a public interest as opposed to a private interest. Under Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii), you must " ... establish that (you are) not organized or operated for the benefit of private interests such as designated individuals, (your) creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

Similar to Revenue Ruling 76-206, above, which was held to be non-exempt, even though your organization serves some incidental public benefit, your main activities serve private interests to a substantial degree. Your organization's activities enable Y to increase its total revenues and therefore benefit Y more than incidentally.

You operate in a manner similar to the organization described in SICO Foundation v. United States, above, which was held to be non-qualifying due to its commercial nature. Moreover, you are part of a system that operates for the benefit of the for-profit corporation Y and your affiliation with this system taints you with a substantial commercial purpose.

Any incidental charitable activities in which you engage are accomplished side-by-side with Y and are so intrinsically interrelated to your overall operations as to be functionally indistinguishable from Y's business and commercial operations, as is the case with the organization described in P.L.L. Scholarship Fund v. Commissioner, above, which was held to be nonexempt.

Like the organization described in est of Hawaii v. Commissioner, above, you have enabled your organization to function as an instrument to further the purposes of B and his for-profit company Y, resulting in impermissible private benefits and/or prohibited inurement. Your enterprise is carried on in such a manner that Y benefits substantially from your operation. The potential for some of your net earnings to flow or inure to the benefit of private individuals, including B, who is in a position of influence or control over your operations, represents a significant bar to exemption.

As established in International Postgraduate Medical Foundation v. Commissioner, above, when a for-profit organization benefits substantially from the manner in which the activities of a related nonprofit organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes. Since your operations generate income for Y, which results in substantial benefit to Y, you are not described in section 501(c)(3) of the Code.

APPLICANT'S POSITION

You believe that you qualify for exemption under section 501(c)(3) of the Code primarily for the following reasons, since you state that your activities and operations will:

- Reduce poverty and dependence on U.S. and European economic aid by creating employment opportunities and economic development in a poor and impoverished area.
- Promote community development, education and achievement through cooperative effort.
- Be directed at the enhancement of local health, education, indigenous arts and library programs for both young and old, encouraging democratic participation via distributions of your net profits.
- Improve the community's skills, self-esteem, motivation, environmental awareness and sense of empowerment at a grass roots level.

SERVICE'S RESPONSE TO APPLICANT'S POSITION

We do not contest your position with respect to your above position. That these outcomes may further a charitable purpose is not at issue. What is at issue is that your primary activities and operations serve a substantial nonexempt purpose that overshadows these charitable intents.

The fact that some of your activities may further charitable purposes will not detract from the existence of a substantial nonexempt purpose, to wit, its operation of a competitive enterprise.

Despite any charitable benefits you bring about, the facts pertaining to your case belie your assertion and undermine your position that you qualify for exemption.

Specifically, your purpose, as stated in your charter, is to develop the environmental resource of rainwater by creating a sustainable rainwater collection and bottling system coupled with a power generation plant. Your website states your mission as the "profitable production of bottling pristine rainwater". Your application states that your primary activity for which you obtained a foreign business license is collecting rainwater, running the water through a filtration process and initially selling the water in bulk containers. You envision "after sufficient capital is accumulated, that the company will purchase or lease a bottling line facility to bottle the island on island for sale off island." The generation and sale of surplus hydro power that is not used

by the rainwater project to the Q island power company is referred to as a “secondary” activity, incidental to your bottling activities.

You indicated that your President, B, and his family own Y, the for-profit organization that will benefit from the bottling and commercial sales of surplus rainwater after it has passed through the turbines of the electricity generating power plant operated by you. You mention that you “will be run along similar lines to that of a commercial entity” and that your “rate of expansion will totally depend on sales of water, future demand for electricity”, indicating that you operate in a commercial manner.

A reasonable assessment of the above facts results in a logical inference that you operate in a commercial manner as a for-profit entity for the substantial nonexempt purpose of benefiting Y, which represents your primary purpose and results in prohibited inurement to B and his family, thus overcoming any charitable presumptions or assertions and precluding recognition as an exempt organization under section 501(c)(3) of the Code.

CONCLUSION

Based on the facts presented above, we hold that you do not meet the requirements for tax exemption under section 501(c)(3) of the Code because you are not organized for an exempt purpose and because you operate in a commercial manner as a for-profit entity for the substantial nonexempt purpose of benefiting Y, which results in prohibited inurement to B and his family. You are not operated exclusively for exempt purposes since your activities serve a private rather than a public purpose within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations and inure to the benefit of private interests within the meaning of section 1.501(c)(3)-1(c)(2) of the regulations. Therefore, exemption under section 501(c)(3) of the Code is denied.

YOUR APPEAL RIGHTS

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. For more information about representation, see Publication 947, Practice Before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892